IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 991 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVPUJAN MAIYADDIN SHARMA

Versus

DY POLICE COMMISSIONER

Appearance:

1. Special Criminal Application No. 991 of 2003

MR NM KAPADIA for Petitioner No. 1

MR LR PUJARI Ld. APP for Respondents

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 29/01/2004

ORAL JUDGEMENT

1. Heard Mr.N.M.Kapadia, learned advocate for the petitioner and Mr.L.R.Pujari, learned APP for the respondents.

2. In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the externment order dated 2.9.2002 (Annexure-D) passed under Section 56 of the Bombay Police Act (hereinafter referred to as "the Act") by respondent no.1 externing the petitioner from Surat City, contiguous districts of Surat (Rural), Bharuch, Navsari and Valsad.

3. On 18.1.2002, show cause notice came to be served on the petitioner under Section 56 of the Act by the Assistant Commissioner of Police G-Division, Surat. That the petitioner appeared and gave bond of Rs.2000/- on 30.1.2002. That the petitioner examined 4 witnesses and thereafter, on 19.6.2002 the petitioner filed written submissions. Thereafter, the externment order dated 2.9.2002 (Annexure-D) came to be passed by the respondent no.1 - Deputy Commissioner of Police, Southern Division, Surat city.

4. It is submitted by Mr.Kapadia, learned advocate for the petitioner that 3 cases under Indian Penal code came to be registered against the petitioner. The last case has been registered on 24.7.2001 by Pandesara Police Station, Surat City for the offences under Sections 323, 504 and 114 of the Indian Penal Code. It is further submitted that in the impugned order of externment the statements of two witnesses recorded relating to the incident of 29.10.2001 and 6.12.2001 respectively have been referred to without disclosing the identity of the witnesses. It is further submitted that no subjective satisfaction has been reached by respondent no.1 before passing the impugned order of externment inasmuch as there is no material to show that the statements of other persons have been recorded, and that the requirement of Section 56(b) of the Act has not been complied with since the statements recorded are that of the victims only and the subjective satisfaction recorded in the impugned order only relates to the victims of the incident alleged against the petitioner.

Reliance has been placed on the decision rendered in Special Criminal Application No.1303 of 1992 by the Division Bench of this Court, copy whereof has been placed on record. In Para.2 of the said judgment while dealing with the case of externment under Section 56 of the Bombay Police Act, the Division Bench observed, "In the impugned order of externment the Sub-Divisional Magistrate has stated that the victims of the incidents are not willing to come forward to depose against the petitioner because of his fear. Under Section 56 of the

Bombay Police Act the externing authority must form a subjective opinion that witnesses are not willing to come forward to give evidence in public against the person sought to be externed by reason of apprehension on their part as regards the safety of their persons or property. This requirement is not clearly satisfied in the present case. It is clear that the opinion formed by the Sub-Divisional Magistrate is only as regards the witnesses, who are the victims of the said incident and not other witnesses. This opinion would clearly not be the requisite opinion contemplated by the mandatory requirement of Section 56. Therefore, the impugned order of externment passed by the Sub-Divisional Magistrate, Palitana at Annexure-B and the impugned order passed by the State Government at Annexure-C would be illegal. We are supported in our view by the unreported judgment of this Court in Special Criminal Application No.18 of 1969, relevant portion of which is reproduced in the case of Navabkhan Vs. State of Gujarat, reported in AIR 1974 SC 1471 at Page-1474 Para.5.

5. It is submitted by Mr.L.R.Pujari, learned APP that out of three cases, two cases registered against the petitioner have been registered in the year 1999 and the 3rd case is registered on 24.7.2001. It is further submitted that the witnesses may be available when the first two cases were registered in the year 1999. That the show cause notice has been issued on 18.1.2002, whereas the impugned order (Annexure-D) came to be passed on 2.9.2002 and that the petitioner must have been, in all probabilities, released on bail in the above cases registered against him, and that the petitioner is becoming more and more dangerous with the passage of the time, with the result no witnesses would come forward to depose against him.

6. It is not disputed that the statements recorded for reaching the subjective satisfaction for the purpose of passing the impugned order are that of the victims and no statement of any other person other than the victim have been recorded for reaching the subjective satisfaction by the externing authority. It has been clearly laid down in the abovereferred judgment of the Division Bench of this Court that mandatory requirement of Section 56 of the Act requires not only the subjective satisfaction as regards the victims but Section 56 of the Act also requires the subjective satisfaction as regards the other persons.

7. In the instant case, the subjective satisfaction recorded by the externing authority is only as regards

the witnesses who are the victims of the incident and there is no subjective satisfaction as regards the other persons i.e. other than the victims of the petitioner.

8. In my opinion, the present case is squarely covered by the decision of the Division Bench judgment rendered in Special Criminal Application No.1303 of 1992 and therefore, the petition will have to be allowed by quashing and setting aside the impugned order of externment (Annexure-D) dated 2.9.2002 and the order (Annexure-E) dated 7.5.2003 passed by respondent no.2.

9. In view of the above, this petition is granted and accordingly allowed. The impugned order of externment (Annexure-D) dated 2.9.2002 passed by respondent no.1 and the impugned order (Annexure-E) dated 7.5.2003 passed by the respondent no.2 are hereby quashed and set aside. Rule made absolute. Direct service is permitted."

(N.G.Nandi,J.)

(vipul)